AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 2(a). This sheet replaces the original sheet. In Fig. 2(a) labels "node" and "user" have been added.

Attachment: Replacement Sheet

Annotated sheet showing changes.

REMARKS

Claims 1-7, 19-21, and 23-26 are currently pending in this application. Claims 8 -18 and 22 have been canceled.

Claims 1 has been rejected under 35 U.S.C. 103 as being unpatentable over Sakauchi in view of Fredette et al. This rejection is respectfully traversed.

Claim 1 recites "creating a new protection virtual path, using the routing-protocol and the signaling-protocol". The routing protocol is responsible for discovery of neighbors and link status, reliable distribution of routing topology information and optimal route determination while signaling protocol provides the capability of establishing, tearing down and modifying connections across network nodes. Neither Sakauchi nor Fredette et al. disclose routing protocol or signaling protocol as claimed.

Claims 2, 3 and 5-7 have been rejected under 35 U.S.C. 103 as being unpatentable over Sakauchi and Yamashita. These rejections are respectfully traversed. The combination of Sakauchi and Yamashita fails to disclose the method step of "creating a protection virtual path connecting the first node with the second node through at least a third node using a routing-protocol and a signaling-protocol" nor does the combination disclose the steps of separately monitoring the working line and the protection line in sequence as those steps are set forth in Claim 2. Neither Sakauchi nor Yamashita et al disclose monitoring a failure condition in the working line of a protection virtual path and switching to a protection line in the given span upon detection of a failure condition in the working span as set forth in claim 3.

Claim 4 which depends from claim 2 has been rejected along with claims 18-24 as being unpatentable over Sakauchi in view of Yamashita et al. and Fredette et al. Claim 4 requires

"creating a new protection virtual path, using the routing-protocol and the signaling protocol, for a given span in the first protection virtual path". The references of Sakauchi, Yamashita et al., and Fredette et al. do not disclose creating a new protection virtual path using the routing-protocol and the signaling-protocol for a given span in the first protection virtual path even in combination nor would it be obvious to combine the references.

Claim 19 as amended incorporates the language of claim 22 requiring electronic circuitry adapted to support a routing-protocol and electronic circuitry adapted to support a signaling- protocol. This feature in combination with the remaining elements of the claim are not disclosed in the combination of Sakauchi, Yamashita et al. and Fredette et al.

Further, the necessary teaching, suggestion or motivation for the proposed combination of Sakauchi and Fredette et al. is lacking. "Determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on underlying facts." *In re Kumar*, 2005 U.S. App. LEXIS 17215,*8 (Fed. Cir. 2005). "During examination, *the examiner bears the initial burden of establishing a prima facie case of obviousness...* The prima facie case is a procedural tool, and requires the examiner *to initially produce evidence to support a ruling of obviousness. Id.* (emphasis added) *There must be a suggestion or motivation in the prior art to modify a reference* to satisfy the claimed invention. *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984)(emphasis added). "*The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.*" *Id.* (emphasis added) It is impermissible to use the inventor's own work to find the necessary motivation or suggestion to modify a reference to satisfy the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303, 312-313 (Fed. Cir. 1983)('To imbue one of ordinary skill in the art with knowledge of the invention in suit, when

no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of hindsight syndrome wherein that which only the inventor taught is used against the teacher.")

"When an obviousness determination is based on multiple references, there must be a showing of some 'teaching, suggestion, or reason' to combine the references...Althoug h a reference need not expressly teach that the disclosure contained therein should be combined with another... the showing of combinability, in whatever form, must be '*clear and particular.*'" Winner International Royalty Corp. v. Wang, 202 F.3d 1340, 1348-1349 (Fed. Cir. 2000)(emphasis added).

When analyzed under the foregoing legal standards, the combinations of Sakauchi and Fredette et al. and Yamashita et al. cannot be sustained. It is respectfully requested that the rejections be withdrawn.

Summary

Applicants have made a diligent and bona fide effort to answer each and every ground for rejection or objection to the specification including the claims and to place the application in condition for allowance. Reconsideration and further examination is respectfully requested, and for the foregoing reasons, Applicant respectfully submits that this application is in condition to be passed to issue and such action is earnestly solicited.

It is believed that no additional fees are presently due. However, should that determination be incorrect, the undersigned hereby authorizes the Patent Office officials to debit Deposit Account No. 50-0562 to satisfy any and all fees which may be due.

Should the Examiner wish to discuss this matter further, please contact the undersigned at the below listed number.

Dated: October 13, 2005

Respectfully submitted,

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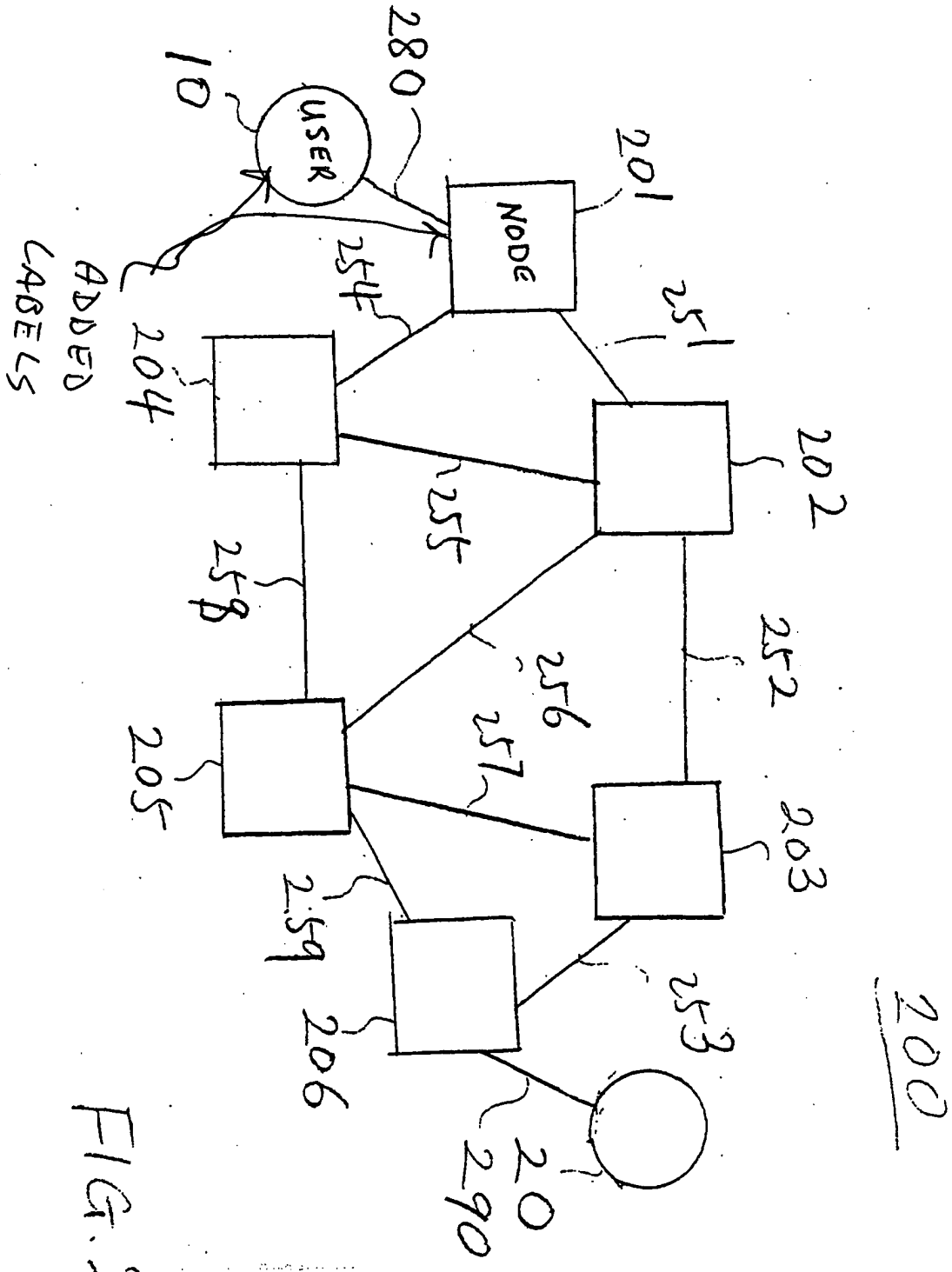

FIG. 2a